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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 206666

PRELIMINARY RECITALS

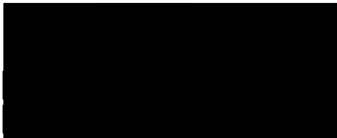
Pursuant to a petition filed on October 27, 2022, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. regarding Medical Assistance (MA), a hearing was held on November 23, 2022, by telephone.

The issue for determination is whether the agency erred in its denial of the petitioner's request for a fully-electric hospital bed.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: L. Crawford
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.

2. Petitioner is enrolled in the Family Care Program (“FCP”).
3. Petitioner is in the process of being discharged from a skilled nursing facility back to his home.
4. The agency approved a semi-electric hospital bed for petitioner to have in his home. Petitioner will have 24/7 caregiver support and will transfer with the use of a Hoyer lift.
5. Petitioner sought approval for FCP funding of a fully-electric hospital bed. A fully-electric hospital bed is adjustable for height with a motor rather than a crank as with a semi-electric hospital bed.
6. The request was denied.
7. Petitioner appealed internally to the Community Care Grievance and Appeals Committee. The Committee upheld the denial by notice to petitioner dated 7/27/22.
8. On 10/27/22 the petitioner filed a request for hearing with DHA.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Adm. Code § DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client’s long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code § DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Adm. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the CMO over any decision, omission, or action of the CMO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant’s satisfaction, she may then request a hearing with the Division of Hearings and Appeals.

The issue in this case is whether the CMO erred in its denial of petitioner’s request for a fully-electric hospital bed. As has been noted many times in the past, there are no standards written in the law or policy on how to make such a determination. It comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Adm. Code Ch. DHS § 107.02(3)(e).

While it is correct to say that the standard under Wis. Admin. Code § DHS 10.44(2)(f)3 specifically includes that the ISP should assist the enrollee to be as self-reliant and autonomous “as possible *and* desired” by the enrollee, it is also the long-standing position of the Department, as affirmed in many fair hearing decisions, that the Family Care participant does not have “unfettered choice” in deciding what supports Family Care provides that will serve him or her, what living arrangements will be provided by Family Care, and exactly how the care plan is to be configured.

An electric hospital bed is durable medical equipment which is covered under the state's plan for medical assistance. There is no dispute that the bed can be provided under Family Care if it is medically necessary, appropriate, and cost-effective. Id., See, Wis. Admin. Code Ch. DHS 107.24(2)(c)8.

In this case, it is undisputed that it is medically necessary for the Petitioner to have a bed that is adjustable for height and that can have the head and foot of the bed adjusted for cares to be provided to the Petitioner. The MCO asserts that the Petitioner's outcomes can be met by a semi-electric bed while the Petitioner contends that he requires a fully electric hospital bed. The MCO argues that a fully electric bed is a convenience for Petitioner's caregivers and not medically necessary.

The Petitioner asserts that a fully electric bed is medically necessary and is necessary for the Petitioner to meet his outcomes.

This case is decided based on the burdens of the parties. Neither party submitted particularly persuasive evidence. Neither party submitted an assessment by a physical therapist, occupational therapist, or DME provider. I have no objective evidence as to the abilities of petitioner. Neither party submitted a long-term care functional screen despite my certainty that one has been completed in the past and is used to guide the care plan for petitioner. Neither party submitted testimony of caregivers which could have been helpful to determine whether an electric bed would be considered necessary, or is merely a convenience for petitioner or his caregivers. Finally, no reliable evidence was offered showing costs of a fully-electric hospital bed as would be purchased in this case. Additionally, the rationale presented by petitioner that he desires to adjust the height of the bed himself as a means of assisting with his cares is not persuasive. There is no reason on the record before me that petitioner's caregivers cannot simply use the crank when needed. If this is wrong then it is petitioner's burden to prove that this is wrong.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. Because the request is petitioner's, petitioner bears the ultimate burden of demonstrating that the fully-electric hospital bed is necessary, appropriate, and cost-effective. In this case and based on this hearing record there is no way I could make a determination that the request is justified. It may be that a new request in the future can be supported, but this record falls well short of that.

CONCLUSIONS OF LAW

Petitioner failed to demonstrate that the requested fully-electric hospital bed is necessary, appropriate, and cost-effective.

THEREFORE, it is

ORDERED

The agency did not err in its denial of the requested fully-electric hospital bed. This matter has been dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

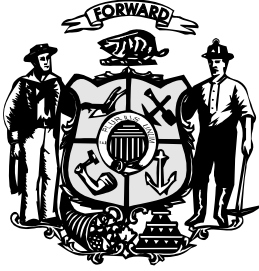
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of January, 2023



\s _____ -

John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 17, 2023.

Community Care Inc.
Office of Family Care Expansion
Health Care Access and Accountability